

**REMARKS**

Reconsideration of the application as presently amended is respectfully requested. Applicant respectfully submits that no new matter has been added. Claims 1-35 have been amended. Claims 1-35 are now pending. No claims have been added or canceled.

Claim 15 and claims 29-32 stand objected to due to various informalities. Claims 15, 29, and 31 have been amended in response. Applicant respectfully requests that the objections be withdrawn.

Claims 1-4, 10, 11, and 13-19 stand rejected under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent Application 2002/0120763 to Miloushev et al. ("Miloushev"). Claim 1 requires, *inter alia*:

- (a) a layer 2 switch having a plurality of ports, wherein a third port of a plurality of ports is configured to be in communication with a client;
- (b) a first server configured to be in communication with a first one of the plurality of ports; and
- (c) a second server configured to be in communication with a second one of the plurality of ports; and
- (d) the first server and the second server configured to function with the layer 2 switch to cause the switch to operate as a layer 4 switch;

Applicant respectfully submits that Miloushev fails to teach or suggest at least one of the distinguishing features of claim 1, namely, a first server and a second server configured to function with a layer 2 switch to cause the switch to operate as a layer 4 switch. In characterizing Miloushev, the Office Action states:

The first server and the second server being configurable to function with the layer 2 switch as a layer 4 switch (see paragraphs 123 and 124, the file switch supports TCP and UDP IP network protocols; therefore, the file servers is capable of communicating with the file switch as a layer 4 switch).

Applicant respectfully submits that neither paragraphs 123-124 of Miloushev, nor any other portion thereof, in any way discloses the above-described feature of claim 1. Indeed, Miloushev fails to address layer 4 switching at all. For at least this reason, Applicant respectfully submits that claim 1 and all claims depending therefrom are novel over Miloushev.

Claims 5-9, 12, and 20-32 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Miloushev in view of U.S. Patent Application 2002/0138628 to Tingley ("Tingley"). Regarding claims 5-9, Miloushev and Tingley each fail to teach a first server and second server configured to function with a layer 2 switch as a layer 4 switch as required by claim 1. Miloushev and Tingley are each silent regarding this claim feature. As a result, the addition of Tingley does not overcome the deficiencies of Miloushev addressed above. For at least these reasons, Applicant respectfully submits that claims 5-9 are patentable over Miloushev and Tingley.

Claim 20 requires, *inter alia*:

- (a) configuring a plurality of servers to each have the same virtual IP address;
- (b) configuring the plurality of servers to each have the same virtual MAC address for the virtual IP address;
- (c) establishing a communication path between the plurality of servers and a layer 2 switch such that each one of said plurality of servers is configured to be in communication with a different port of the layer 2 switch; and
- (d) configuring said plurality of servers, in cooperation with said layer 2 switch, to operate collectively as a layer 4 switch, the layer 4 switch configured to be in communication with a client via one port of the layer 2 switch.

Miloushev and Tingley each fail to teach a first server and a second server configured to function with a layer 2 switch as a layer 4 switch as required by claim 20. In contrast to claim 20, Miloushev and Tingley are each silent regarding this claim feature. As a result, the addition of

Tingley does not overcome the deficiencies in the disclosure of Miloushev addressed above. For at least these reasons, Applicant respectfully submits that claims 20-28 are patentable over Miloushev and Tingley.

Amended claim 29 requires, *inter alia*:

- (a) a plurality of servers, each server configured to have a virtual IP address that is the same and a configurable MAC address for the virtual IP address;
- (b) a layer 2 switch having a plurality of ports, one of the plurality of ports being for communicating with a client;
- (c) a communication path between each one of the plurality of servers and the plurality of ports such that a subnetwork is created between the plurality of servers; and
- (d) the plurality of servers being configured to operate collectively with the layer 2 switch so that the switch operates as a layer 4 switch; and
- (e) wherein only one of the plurality of servers is designated as an active server that establishes new connections with the client, the plurality of servers utilizing the subnetwork at configured intervals to aid in a determination of which servers should become the active server.

Miloushev and Tingley each fail to teach a first server and a second server configured to function with a layer 2 switch as a layer 4 switch as required by claim 29. In contrast to claim 29, Miloushev and Tingley are each silent regarding this claim feature. As a result, the addition of Tingley does not overcome the deficiencies in the disclosure of Miloushev addressed above. For at least these reasons, Applicant respectfully submits that claims 29-32 are patentable over Miloushev and Tingley.

In view of the above amendment and remarks, Applicant respectfully submits that the present application is in condition for allowance. A notice to that effect is respectfully requested.

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Respectfully submitted,

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